Golden Wheel Credit Sdn Bhd v Dato' Siah Teong Din

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-02(NCC)(W)-757–05 OF 2023
RAVINTHRAN, AZHAHARI RAMLI AND FAIZAH JAMALUDIN JJCA
25 JULY 2025

Contract — Agreement — Moneylending agreements — Appellant sought restitution of unpaid principal amount against respondent under ss 66 and 71 of Contracts Act 1950 — Moneylending agreements found to be void and unenforceable — Whether moneylending agreements, which were void and unenforceable under Moneylenders Act 1951, were also illegal — Whether appellant entitled to recover restitution of unpaid principal

The appellant was a moneylender licensed under the Moneylenders Act 1951 ('the MLA') and the respondent was a shareholder and director of Instant Bonus Sdn Bhd ('Instant Bonus'), a property development company. The appellant and the respondent entered into two moneylending agreements ('the moneylending agreements'). Both moneylending agreements were in the statutory form for 'Moneylending Agreement (Unsecured Loan)' provided in Schedule J of the Moneylenders (Control and Licensing) Regulations 2003 ('Regulations'). Pursuant to the moneylending agreements, the letters of instruction ('LOIs') and the guarantees, the appellant disbursed the total sum of RM3,423,500 to Instant Bonus. The sum of RM76,500 ('transaction costs') was deducted from the RM3.5m total loan sum as transaction costs borne by the respondent. Out of the total loan sum disbursed to Instant Bonus, only the sum of RM40,000 was repaid to the appellant. Subsequently, Instant Bonus was wound up in 2019. The appellant had filed a proof of debt to the liquidators of Instant Bonus for the sum of RM3,761,035.12. The appellant filed Suit 596 against the respondent, seeking only the return of the outstanding sum of RM3,383,500 ('unpaid principal') of the monies disbursed to Instant Bonus pursuant to the moneylending agreements, the LOIs and the guarantees. The appellant's cause of action in Suit 596 was for restitution of the unpaid principal under ss 66 and 71 of the Contracts Act 1950 ('the CA') and the equitable principles of moneys had and received and unjust enrichment. The High Court found that the moneylending agreements and moneylending transactions were illegal due to non-compliance with the MLA and thus the appellant's action in Suit 596 was dismissed. The learned judge held that the appellant could not recover the unpaid principal, under ss 66 and 71 of the CA, because the moneylending agreements were illegal and therefore void ab initio. Dissatisfied, the appellant filed this appeal. The issues for determination were: (a) whether the moneylending agreements, which were void and unenforceable under the MLA, were also illegal; and (b) whether the appellant was entitled to

recover restitution of the unpaid principal.

Held, allowing the appeal:

(1) Although the appellant entered into moneylending agreements with the respondent, these agreements did not comply with the prescribed form required for secured loans. Accordingly, pursuant to s 10P(3) of the MLA, they were void, of no effect and unenforceable. However, the moneylending agreements and the corresponding moneylending transactions were not illegal because these agreements were void due to non-compliance with MLA as while all illegal agreements were void, not all void agreements were illegal. The object of the loans under the moneylending agreements was not forbidden by law or fraudulent. Neither was it immoral or against public policy. As for the consideration of the moneylending agreements ie the interest charged, although the rate of interest charged for the loans was in error, the rate was not excessive or extortionate — it was at 18%pa; the limit for unsecured loans under the MLA. The error in the interest rate charged made the moneylending agreement void, of no effect and unenforceable pursuant to s 17A(3) of the MLA and the appellant guilty of an offence under the Act. It did not make the agreements illegal. Thus, the moneylending agreements were not illegal either under the MLA or s 24 of the CA (see paras 17, 21–22 & 32–34).

(2) Section 66 of the CA provided where an agreement was discovered to be void, any person who had received any advantage under the agreement was bound to restore it, or make compensation for it, to the person from whom he received it. The respondent had received advantage under the moneylending agreements by the appellant acting on his written instructions in the LOIs in disbursing the loan amounts to Instant Bonus. The moneylending agreements were not illegal either under the MLA or s 24 of the CA as they were entered by a licensed moneylender, did not impose extortionate interest rates on the borrower, and neither their consideration nor object was immoral or against public policy. However, the appellant's act of lending the monies and disbursing the loans under the moneylending agreements and the LOIs had been carried out and granting a s 66 remedy would not undermine the intent of the MLA. There was no nexus between illegality and the agreements, and the question of the parties' culpability did not arise. The moneylending agreements were transparently structured as agreements to lend money by a licensed moneylender, without any attempt to disguise their true nature. Although the agreements were in a wrong prescribed form, they were, nonetheless, in a form prescribed by the Regulations and clearly identified themselves as moneylending agreements. The application of proportionality to the matrix of facts supported granting the appellant a s 66 remedy. Refusing a s 66 remedy would not constitute a

proportionate response, particularly given that the moneylending agreements, though void, were not illegal (see paras 38, 40, 52–55 & 58–60).

[Bahasa Malaysia summary

Perayu adalah pemberi pinjam wang yang dilesenkan di bawah Akta Pemberi Pinjam Wang 1951 ('APPM') dan responden adalah pemegang saham dan pengarah Instant Bonus Sdn Bhd ('Instant Bonus'), sebuah syarikat pembangunan hartanah. Perayu dan responden telah memeterai dua perjanjian pinjaman wang ('perjanjian pinjaman wang'). Kedua-dua perjanjian pinjaman wang tersebut adalah dalam bentuk berkanun untuk 'Perjanjian Pinjaman Wang (Pinjaman Tidak Bercagar)' yang diperuntukkan dalam Jadual J kepada Peraturan-Peraturan Pemberi Pinjam Wang (Kawalan dan Perlesenan) 2003 ('Peraturan'). Berdasarkan perjanjian pinjaman wang, surat arahan ('LOI') dan jaminan, perayu telah membayar sejumlah RM3,423,500 kepada Instant Bonus. Jumlah RM76,500 ('kos transaksi') telah ditolak daripada jumlah pinjaman keseluruhan RM3.5 juta sebagai kos transaksi yang ditanggung oleh responden. Daripada jumlah pinjaman keseluruhan yang dibayar kepada Instant Bonus, hanya RM40,000 telah dibayar balik kepada perayu. Kemudiannya, Instant Bonus telah digulung pada tahun 2019. Perayu telah memfailkan bukti hutang kepada pelikuidasi Instant Bonus untuk sejumlah RM3,761,035.12. Perayu telah memfailkan Saman 596 terhadap responden, memohon hanya pengembalian jumlah tertunggak RM3,383,500 ('prinsipal tidak berbayar') daripada wang yang dibayar kepada Instant Bonus berdasarkan perjanjian-perjanjian pemberi pinjam wang, LOI dan jaminan. Kausa tindakan perayu dalam Saman 596 adalah untuk restitusi prinsipal tidak berbayar di bawah ss 66 dan 71 Akta Kontrak 1950 ('AK') serta prinsip ekuiti wang yang telah diterima dan pengayaan tak adil. Mahkamah Tinggi mendapati bahawa perjanjian pinjaman wang dan transaksi pinjaman wang adalah tidak sah di sisi undang-undang disebabkan ketidakpatuhan kepada APPM dan oleh itu tindakan perayu dalam Saman 596 telah ditolak. Hakim yang bijaksana memutuskan bahawa perayu tidak boleh mendapatkan semula prinsipal tidak berbayar, di bawah ss 66 dan 71 AK, kerana perjanjian pinjaman wang adalah tidak sah di sisi undang-undang dan oleh itu batal ab initio. Tidak berpuas hati, perayu memfailkan rayuan ini. Isu-isu untuk penentuan adalah: (a) sama ada perjanjian pinjaman wang, yang batal dan tidak dapat dikuatkuasakan di bawah APPM, juga tidak sah di sisi undang-undang; dan (b) sama ada perayu berhak mendapatkan semula restitusi prinsipal tidak berbayar.

Diputuskan, membenarkan rayuan:

(1) Walaupun perayu memeterai perjanjian pinjaman wang dengan responden, perjanjian-perjanjian ini tidak mematuhi bentuk berkanun yang diperlukan untuk pinjaman bercagar. Sehubungan itu, menurut

s 10P(3) APPM, perjanjian-perjanjian tersebut adalah batal, tidak berkesan dan tidak dapat dikuatkuasakan. Walau bagaimanapun, perjanjian pinjaman wang dan transaksi pinjaman wang yang berkaitan tidak menyalahi undang-undang kerana perjanjian-perjanjian ini adalah batal disebabkan ketidakpatuhan kepada APPM kerana walaupun semua perjanjian yang tidak sah di sisi undang-undang adalah batal, tidak semua perjanjian yang batal adalah tidak sah di sisi undang-undang. Objek pinjaman di bawah perjanjian pinjaman wang tidak dilarang oleh undang-undang atau penipuan. Ia juga bukan tidak bermoral atau bertentangan dengan dasar awam. Bagi balasan perjanjian pinjaman wang iaitu faedah yang dikenakan, walaupun kadar faedah yang dikenakan untuk pinjaman adalah salah, kadar tersebut tidak berlebihan atau melampau — ia adalah 18% setahun; had untuk pinjaman tidak bercagar di bawah APPM. Kesilapan dalam kadar faedah yang dikenakan menjadikan perjanjian pinjaman wang batal, tidak berkuat kuasa dan tidak dapat dikuatkuasakan menurut s 17A(3) APPM dan perayu bersalah atas satu kesalahan di bawah Akta tersebut. Ia tidak menjadikan perjanjian-perjanjian itu tidak sah di sisi undang-undang. Oleh itu, perjanjian pinjaman wang tidak menyalahi undang-undang sama ada di bawah APPM atau s 24 AK (lihat perenggan 17, 21–22 & 32–34).

(2) Seksyen 66 AK memperuntukkan bahawa apabila sesuatu perjanjian didapati batal, mana-mana pihak yang telah menerima sebarang faedah di bawah perjanjian itu terikat untuk mengembalikannya, atau membuat pampasan untuknya, kepada pihak dari siapa ia menerimanya. Responden telah menerima faedah di bawah perjanjian pinjaman wang melalui tindakan perayu yang bertindak atas arahan bertulisnya dalam LOI dalam menyalurkan jumlah pinjaman kepada Instant Bonus. Perjanjian pinjaman wang tidak menyalahi undang-undang sama ada di bawah APPM atau s 24 AK kerana ia dimeterai oleh pemberi pinjam wang berlesen, tidak mengenakan kadar faedah yang melampau kepada peminjam, dan balasan mahupun objeknya bukan tidak bermoral atau bertentangan dengan dasar awam. Walau bagaimanapun, tindakan perayu memberi pinjaman wang dan menyalurkan pinjaman di bawah perjanjian pinjaman wang dan LOI telah dilaksanakan dan pemberian remedi s 66 tidak akan menjejaskan tujuan APPM. Tiada kaitan antara ketidaksahan dan perjanjian-perjanjian tersebut, dan persoalan tentang kesalahan pihak-pihak tidak timbul. Perjanjian pinjaman wang distrukturkan secara telus sebagai perjanjian untuk memberi pinjaman wang oleh pemberi pinjam wang berlesen, tanpa sebarang percubaan untuk menyembunyikan sifat sebenarnya. Walaupun perjanjian-perjanjian itu menggunakan bentuk berkanun yang salah, namun ia tetap dalam borang yang ditetapkan oleh Peraturan dan jelas mengenal pasti diri mereka sebagai perjanjian pinjaman wang. Penggunaan prinsip perkadaran kepada matrik fakta menyokong

pemberian remedi s 66 kepada perayu. Menolak remedi s 66 tidak akan menjadi respons yang berkadar, terutamanya memandangkan perjanjian pinjaman wang, walaupun batal, tidak menyalahi undang-undang (lihat perenggan 38, 40, 52–55 & 58–60).]

Cases referred to

Amanah Raya Capital Sdn Bhd v Siti Zaharah bt Sulaiman [2014] 11 MLJ 464; [2013] 8 CLJ 516; [2013] 2 AMCR 185, HC (refd)
CME Group Bhd v Bellajade Sdn Bhd and another appeal [2019] 1 MLJ 141; [2018] 10 CLJ 147; [2018] 7 AMR 105, FC (refd)
Detik Ria Sdn Bhd v Prudential Corp Holdings Ltd & Anor [2025] 3 MLJ 22; [2025] 4 CLJ 159; [2025] 3 AMR 461, FC (folld)
Liputan Simfoni Sdn Bhd v Pembangunan Orkid Desa Sdn Bhd [2019] 4 MLJ 141; [2019] 1 CLJ 183, FC (refd)
Mahmood bin Ooyub v Li Chee Loong and another appeal [2020] 6 MLJ 755; [2020] CLJU 660, CA (distd)
Pang Mun Chung & Anor v Cheong Huey Charn [2018] 4 MLJ 594; [2018] 8 CLJ 663; [2018] AMEJ 0404, CA (refd)
Public Bank Bhd v Ria Realiti Sdn Bhd & Ors [2021] 4 MLJ 537; [2021] 3 CLJ 772, CA (refd)
Singma Sawmill Co Sdn Bhd v Asian Holdings (Industrialised Buildings) Sdn Bhd [1980] 1 MLJ 21; [1979] 1 LNS 96, FC (refd)
Triple Zest Trading & Suppliers & Ors v Applied Business Technologies Sdn Bhd [2023] 6 MLJ 818; [2023] 10 CLJ 187; [2023] 8 AMR 225, FC (distd)

Legislation referred to

Contracts Act 1950 ss 24, 66, 71, Part V
Moneylenders Act 1951 ss 10P, 10P(3), 16, 17A, 17A(1), (3), (4), 23, 29H
Money Lenders (Control and Licensing) Regulation 2003 Schedules J, K
Real Property Gains Tax Act 1976
Stamp Act 1949

Appeal from: *Golden Wheel Credit Sdn Bhd v Dato' Siah Teong Din* [2023] 11 MLJ 647 (High Court, Kuala Lumpur)

Alfred Lai Choong Wui (with Toh Mei Swan and Ho Weng Sze) (Alfred Lai & Partners) for the appellant.
Wai Chong Khuan (with Derek Chin Tze Qi) (Low & Partners) for the respondent.

Faizah Jamaludin JCA:

INTRODUCTION

[1] The appellant is a moneylender licensed under the Moneylenders Act 1951 ('the MLA 1951'). The respondent was at all material times a shareholder and director of Instant Bonus Sdn Bhd ('Instant Bonus'), a property development company. Instant Bonus was the developer of a project known as 'Robson Hill Residency'.

[2] The appellant and the respondent entered two moneylending agreements dated 9 July 2018 and 24 August 2018 ('moneylending agreements'). Both moneylending agreements were in the statutory form for 'Moneylending Agreement (Unsecured Loan)' provided in Schedule J of the Money Lenders (Control and Licensing) Regulation 2003 ('the Regulation 2003') made by the Minister under s 29H of the MLA 1951.

[3] The moneylending agreement dated 9 July 2018 ('first MLA') was for the loan sum of RM2m, and the moneylending agreement dated 24 August 2018 ('second MLA') was for the loan sum of RM1.5m. The interest charged for both agreements was at the rate of 1.5% per month, which is equivalent to 18%pa.

[4] Simultaneous to entering into the first MLA and second MLA, the respondent wrote letters of instruction ('LOIs') dated 9 July 2018 and 24 August 2018 respectively to the appellant, instructing the latter, to disburse the loan sums under the moneylending agreements to Instant Bonus.

[5] The loans were secured by guarantees executed by Instant Bonus dated 9 July 2018 and 24 August 2018 respectively, where it unconditionally guaranteed the loan sums and all outstanding sums due and owing by the respondent under the first MLA and second MLA respectively ('guarantees').

[6] Pursuant to the moneylending agreements, the LOIs and the guarantees, the appellant disbursed the total sum of RM3,423,500 to Instant Bonus. The sum of RM76,500 ('transaction costs') was deducted from the RM3.5m total loan sum as transaction costs borne by the respondent. Out of the total loan sum disbursed to Instant Bonus, only the sum of RM40,000 was repaid to the appellant.

[7] Instant Bonus was wound up in 2019. The appellants had filed a proof of debt dated 18 September 2019 to the liquidators of Instant Bonus for the sum of RM3,761,035.12.

[8] The appellant filed Suit No WA-22NCC-596–12 of 2020 at the KL High Court ('Suit 596') in December 2020 against the respondent, seeking only the return of the outstanding sum of RM3,383,500 ('unpaid principal') of the monies disbursed to Instant Bonus pursuant to the moneylending agreements, the LOIs and the guarantees.

[9] The appellant did not seek to enforce the moneylending agreements in Suit 596. It explicitly pleaded that it was not seeking the repayment of the unpaid principal under the MLA 1951. The appellant acknowledged that the moneylending agreements are void and unenforceable due to non-compliance with the requirements of the MLA 1951: specifically, the agreements utilised the prescribed form for unsecured loans in Schedule J rather that the form required for secured loans in Schedule K of Regulation 2003, and the interest rate imposed was 18%pa — the maximum rate for unsecured loans — instead of 12%pa which is the statutory limit for secured loans under the MLA 1951. In addition, the appellant deducted the transaction costs and failed to provide the respondent with a stamped copy of both the first MLA and second MLA, before disbursing the loan sums.

[10] The appellant's cause of action in Suit 596 was for restitution of the unpaid principal under ss 66 and 71 of the Contracts Act 1950 ('the CA 1950') and the equitable principles of moneys had and received and unjust enrichment.

[11] The High Court found that the moneylending agreements and moneylending transactions were illegal due to non-compliance with the MLA 1951.

[12] The appellant's action in Suit 596 was dismissed by the High Court with costs of RM25,000. The learned judge held that the appellant could not recover the unpaid principal, under ss 66 and 71 of the CA 1950, because the moneylending agreements were illegal and therefore void ab initio.

[13] Dissatisfied with the High Court's decision, the appellants filed this appeal before us.

ISSUES BEFORE THIS COURT

[14] This appeal raises two issues for this court's determination:

(a) whether the moneylending agreements, which are void and unenforceable under the MLA 1951, are also illegal; and

(b) whether the appellant is entitled to recover restitution of the unpaid principal.

Issue 1: Are the moneylending agreements illegal?

[15] As conceded by the appellants, the moneylending agreements are void, of no effect and unenforceable under the MLA 1951 by reason of the following non-compliance with the MLA 1951:

(a) the moneylending agreements should have been in the statutory form for 'Moneylending Agreement (Secured Loan)' prescribed in Schedule K of Regulation 2003 since they were secured by Instant Bonus' guarantees. Instead, the agreements were in the form for 'Moneylending Agreement (Unsecured Loan)' prescribed in Schedule J;

(b) the interest charged under the moneylending agreements were at the rate of 18%pa (the statutory maximum for unsecured loans). Under s 17A(1) of the MLA 1951, the interest charged on the loan sums should not have been more than at the rate of 12%pa (the statutory maximum for secured loans); and

(c) the appellant failed to comply with s 16 of the MLA 1951: it did not deliver stamped copies of both moneylending agreements before disbursing the monies loaned under the agreements.

[16] The appellant is a moneylender who is licensed under the MLA 1951. Under s 10P of the MLA 1951, the appellant must enter into a moneylending agreement with the borrower in the prescribed form. Section 10P of the MLA 1951 reads:

> 10P Licensee and borrower must enter into a moneylending agreement
>
> (1) A licensee who intends to lend money to a borrower shall enter into a moneylending agreement with the borrower, and that agreement shall be in the prescribed form.
>
> (2) Any licensee who contravenes this section shall be guilty of an offence under this Act and shall be liable to a fine of not less than ten thousand ringgit but not more than fifty thousand ringgit or to imprisonment for a term not exceeding five years or to both, and in the case of a second or subsequent offence shall also be liable to whipping in addition to such punishment.
>
> (3) Any moneylending agreement which does not comply with the prescribed form shall be void and have no effect and shall not be enforceable.

[17] Although the appellant entered into moneylending agreements with the respondent, these agreements did not comply with the prescribed form required for secured loans. Accordingly, pursuant to s 10P(3) of the MLA 1951, they are void, of no effect and unenforceable.

[18] Furthermore, s 17A(3) of the MLA 1951 provides that if the interest charged under a moneylending agreement — whether for a secured or unsecured loan — exceeds the rate specified in s 17A(1), the agreement is rendered void, of no effect, and unenforceable. According to s 17A(4), licensees who contravene s 17A commit an offence under the MLA 1951 and are liable to a fine or imprisonment. Section 17A of the MLA 1951 reads:

> 17A Interest for secured and unsecured loans
>
> (1) For the purposes of this Act, the interest for a secured loan shall not exceed twelve per centum per annum and the interest for an unsecured loan shall not exceed eighteen per centum per annum.
>
> (2) Notwithstanding subsection (1), interest shall not at any time be recoverable by a licensee of an amount in excess of the sum then due as principal unless a Court, having regard to all the circumstances, otherwise decrees.
>
> (3) Where in a moneylending agreement the interest charged for a secured loan or an unsecured loan, as the case may be, is more than that specified in subsection (1), that agreement shall be void and have no effect and shall not be enforceable.
>
> (4) Any licensee who contravenes this section shall be guilty of an offence under this Act and shall be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding eighteen months or to both.

[19] Section 16 of the MLA 1951 requires a copy of the stamped moneylending agreement be delivered to the borrower before the money is lent. Non-compliance with s 16 renders the moneylending agreement unenforceable, and a licensee who executes a moneylending agreement in non-compliance of s 16 is guilty of an offence under the MLA 1951 and shall be liable to a fine or imprisonment.

[20] Furthermore, the transaction costs in the sum of RM76,500, charged by the appellant and deducted from the total loan sums, is contrary to s 23 of the MLA 1951, which prohibits the charge for expenses on loans between licensees and the borrower. Section 23 expressly states that such sum charged shall 'be set off against the amount actually lent and the amount shall be deemed to be reduced accordingly'.

[21] However, we disagree with the learned High Court judge that the moneylending agreements and the corresponding moneylending transactions are illegal because these agreements are void due to non-compliance with the MLA 1951.

[22] This is because, while all illegal agreements are void, not all void agreements are illegal.

[23] The law is settled that agreements may be illegal by operation of statute or illegal at common law, which in Malaysia is codified in s 24 of the CA 1950. Section 24 of the CA 1950 states that every agreement of which its object or consideration is unlawful is void.

[24] The difference between statutory illegality and illegality at common law was explained by Harmindar Singh Dhaliwal JCA (as he then was) in *Pang Mun Chung & Anor v Cheong Huey Charn* [2018] 4 MLJ 594; [2018] 8 CLJ 663; [2018] AMEJ 0404 (CA) as follow:

> [28] Dealing now with the issue of illegality, we observe, at the outset, that the law in this regard can be segregated broadly into contracts that are illegal under statute (statutory illegality) or contracts which are illegal at common law. There is no suggestion in the present case of any statutory illegality. We need only concern ourselves with illegality at common law which must be grounded upon established heads of public policy as the case law suggests. This principle is also embodied in s 24(e) of the Contracts Act which provides that any agreement of which the consideration or object is immoral or opposed to public policy is void.

[25] The Federal Court in *Detik Ria Sdn Bhd v Prudential Corporation Holdings Ltd and Anor* [2025] 3 MLJ 22; [2025] 4 CLJ 159; [2025] 3 AMR 461 ('Detik Ria') observed:

> [160] ... in English law, illegality is governed by common law principles. In Malaysia, however, illegality is primarily determined by s 24 of the Contracts Act 1950, which explicitly defines illegal agreements. While some illegal acts may fall outside s 24, the determination of illegality in Malaysia is, to a large extent at least, a question of statutory construction, not the common law.

[26] It is a long established principal of statutory construction and interpretation that courts must give words in a statute their natural and ordinary meaning. Courts cannot add or subtract any word in a statute: it ought not to read words into a statute unless a clear reason for it is found in the statute itself.

[27] The learned judge held that the moneylending agreements are illegal due to non-compliance of the MLA 1951, although the Act itself does not expressly state so. Sections 10P, 16, and 17A of the MLA 1951 expressly state that non-compliance of the said sections results in the moneylending agreement being void, without effect, and unenforceable, and renders the licensee liable for an offence. However, these provisions do not state that such non-compliance renders the moneylending agreements or transactions illegal.

[28] Moreover, non-compliance with the provisions of an Act does not necessarily make an agreement illegal. The Federal Court in *Liputan Simfoni Sdn Bhd v Pembangunan Orkid Desa Sdn Bhd* [2019] 4 MLJ 141; [2019] 1 CLJ 183, held that non-compliance with the Stamp Act 1949 and the Real Property Gains Tax Act 1976 did not render a sale and purchase agreement illegal.

[29] As regards illegality at common law, we conclude that the moneylending agreements are not illegal. For the reasons set out below, we respectfully differ from the learned judge's findings that the consideration or object of the agreements contravenes s 24 of the CA 1950. Section 24 of the CA 1950 states:

> The consideration or object of an agreement is lawful, unless —
>
> (a) it is forbidden by a law;
>
> (b) it is of such a nature that, if permitted, it would defeat any law;
>
> (c) it is fraudulent;
>
> (d) it involves or implies injury to the person or property of another; or
>
> (e) the court regards it as immoral, or opposed to public policy.
>
> In each of the above cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

[30] The appellant is a moneylender licensed under the MLA 1951. He is not an unlicensed moneylender as in *Mahmood bin Ooyub v Li Chee Loong and another appeal* [2020] 6 MLJ 755; [2020] CLJU 660 (CA) ('Mahmood bin Ooyub'); and *Triple Zest Trading & Suppliers & Ors v Applied Business Technologies Sdn Bhd* [2023] 6 MLJ 818; [2023] 10 CLJ 187; [2023] 8 AMR 225 (FC) ('Triple Zest'). Even though the moneylending agreements were in the prescribed form for unsecured loans instead for secured loans, the said agreements were nonetheless in a form prescribed in the Regulation 2003.

[31] The lender in *Amanah Raya Capital Sdn Bhd v Siti Zaharah bt Sulaiman* [2014] 11 MLJ 464; [2013] 8 CLJ 516; [2013] 2 AMCR 185 (HC) ('Amanah Raya Capital') had also used the wrong prescribed form. Nallini Pathmanathan J (as she then was) held:

> [18] In the instant case here however it is evident that the plaintiff has in fact adopted the format set out in Schedule J in keeping with the Regulations and the Act. The plaintiff's error was in utilising the wrong form, ie, the unsecured loan form rather than the secured loan form. The next issue that falls for consideration is whether on a reading of reg 10(1) and s 10P(1)–(3) the loan disbursed to the defendant under schedule J is therefore deemed void and unenforceable. This does not appear to be the correct construction to be accorded to these provisions. *As*

stated earlier the mischief that the Act and Regulations promulgated under seek to contain or prevent, is the forcing upon borrowers of onerous and punishing terms and conditions in relation to moneylending transactions. To this end specific forms have been set out, the use of which is mandatory. *As the plaintiff here has in fact complied in spirit and principle with the Act and Regulations by utilising one of the forms prescribed it does not appear to this court that the use of the wrong form renders the loan uncollectible*. That might well have been the case if the plaintiff had utilised neither Forms J or K or any other form prescribed by the Act. But that is not the case here. (Emphasis added.)

[32] In this present case, the object of the loans under the moneylending agreements was not forbidden by law or fraudulent. Neither was it immoral or against public policy. The object of the loans was for the payment of the sums owed by Instant Bonus to Econpile, who was its main contractor, for the Robson Hill Residency project.

[33] As for the consideration of the moneylending agreements ie the interest charged, although the rate of interest charged for the loans was in error, the said rate was not excessive or extortionate — it was at 18%pa: the limit for unsecured loans under the MLA 1951. The error in the interest rate charged makes the moneylending agreement void, of no effect and unenforceable pursuant to s 17A(3) of the MLA 1951 and the appellant guilty of an offence under the Act. It does not make the agreements illegal.

[34] For these reasons, we find that the moneylending agreements are not illegal either under the MLA 1951 or s 24 of the CA 1950.

Issue 2: Is the appellant entitled to recover restitution of the unpaid principal?

[35] The moneylending agreements are void ab initio and unenforceable. Consequently, the appellant is not entitled to contractually enforce the said agreements for recovery of the unpaid principal. The issue that arises is whether the appellant may recover restitution of the unpaid principal.

[36] The High Court in *Amanah Raya Capital* held that where the moneylending agreement is void ab initio for the use of the wrong prescribed form, s 66 of the CA 1950 allows the plaintiff to restitution for the monies it loaned to the defendant in that case. This is consistent with illustration (a) of s 66 of the CA 1950.

[37] In this present case, the use of the wrong prescribed form, the charging of interest for an unsecured loan and the failure to give the respondent a stamped copy of the moneylending agreements, rendered the said agreements void ab initio and unenforceable. Based on *Amanah Raya Capital*, because the

moneylending agreements are void ab initio for non-compliance with the MLA 1951, the person who had received advantage under the agreements is bound to compensate or provide restitution to the person from whom he received the advantage.

[38] Section 66 of the CA 1950 provides where an agreement is discovered to be void, any person who has received any advantage under the agreement is bound to restore it, or make compensation for it, to the person from whom he received it. Section 66 reads:

> 66 Obligation of person who has received advantage under void agreement, or contract that becomes void
>
> When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under the agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it.
>
> ILLUSTRATIONS
>
> (a) A pays B RM1,000 in consideration of B's promising to marry C, A's daughter. C is dead at the time of the promise. The agreement is void, but B must repay A the RM1,000.
>
> (b) A contracts with B to deliver to him 250 gantangs of rice before the 1st of May. A delivers 130 gantangs only before that day, and none later. B retains the 130 gantangs after the first of May. He is bound to pay A for them.
>
> (c) A, a singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her RM100 for each night's performance. On the sixth night A wilfully absents herself from the theatre, and B, in consequence, rescinds the contract. B must pay A for the five nights on which she had sung.
>
> (d) A contracts to sing for B at a concert for RM1,000, which are paid in advance. A is too ill to sing. A is not bound to make compensation to B for the loss of the profits which B would have made if A had been able to sing, but must refund to B the RM1,000 paid in advance.

[39] The respondent's defence is that the appellant is not entitled to compensation or restitution of the unpaid principal under s 66 of the CA 1950 because the monies were not disbursed to him but to Instant Bonus.

[40] The facts show that the appellant had disbursed the monies under the moneylending agreements to Instant Bonus based on the agreements and the instructions given by the respondent to the appellant in the LOIs. The appellant had acted on the respondent's instructions. The respondent had, therefore, received advantage under the moneylending agreements by the

appellant acting on his written instructions in the LOIs in disbursing the loan amounts to Instant Bonus.

[41] The Federal Court in its recent decision in *Detik Ria* undertook a comprehensive analysis of whether restitution under s 66 of the CA 1950 can and should be granted where the contract is found to be void and/or illegal.

[42] The Federal Court in *Detik Ria* held that s 66 of the CA 1950 is a wide provision which has no direct parallel under English law. It cited with approval a similar observation made earlier by Ravinthran Paramaguru JCA in *Public Bank Bhd v Ria Realiti Sdn Bhd & Ors* [2021] 4 MLJ 537; [2021] 3 CLJ 772 (CA), where he said:

> [63] ... Section 66 has been said to embody a restitutionary principle which has no parallel in common law. It may have been inspired by rules of equity but resort to it is not the same as seeking relief under equity. *A claim under it is also not a claim under the terms of a void contract but it is for restitution from a party that received an advantage under it*. And *s 66 does not require absence of knowledge of illegality or lack of intention to contravene the law as a precondition for its invocation*. (Emphasis added.)

[43] In *Detik Ria*, the Federal Court examined the first limb of s 66 of the CA 1950, specifically addressing circumstances in which an agreement is 'discovered to be void'. It undertook this analysis due to varying interpretations in case law concerning illegality, which has led to some uncertainty about the application of s 66 of the CA 1950. Like in *CME Group Bhd v Bellajade Sdn Bhd and another appeal* [2019] 1 MLJ 141; [2018] 10 CLJ 147; [2018] 7 AMR 105 (FC), the Federal Court in *Detik Ria* held that its earlier decision in *Singma Sawmill Co Sdn Bhd v Asian Holdings (Industrialised Buildings) Sdn Bhd* [1980] 1 MLJ 21; [1979] 1 LNS 96 (FC), should be construed in the context of its particular facts.

[44] Resulting from its analysis of various case law, the Federal Court pronounced the following principles in respect of s 66 of the CA 1950:

(a) s 66 should be interpreted broadly, thereby permitting remedies such as restoration or restitution to the status quo ante where appropriate;

(b) the phrase 'discovered to be void' in the first limb of s 66 does not imply that a contract is rendered void upon discovery, nor does it mean the contract is void due to the discovery of illegality;

(c) s 66 applies to contracts that are void ab initio. This interpretation aligns with the placement of s 66 in Part V of the CA 1950, which relates to the 'Performance of Contracts,' and prescribes this remedy in situations

where a contract is discovered to be void, irrespective of the parties' knowledge; and

(d) awareness of illegality does not entirely preclude the remedy of restitution under s 66. The mere fact that parties were aware of the agreement's illegality does not necessarily bar relief under s 66.

[45] These principles are found in the following passages of the *Detik Ria* judgment, articulated by Nallini Pathmanathan FCJ:

> [134] Indeed, in *Tan Chee Hoe & Sons Sdn Bhd v Code Focus Sdn Bhd* [2014] 3 MLJ 301; [2014] 3 CLJ 141, the Federal Court granted s 66 relief despite the fact that both parties had knowledge of the illegality, namely the contravention of s 132C of the Companies Act.
>
> (See also: *Paragon Union Bhd v Prestamewah Development Sdn Bhd & Anor and another case* [2018] MLJU 711; [2018] CLJU 1049; [2018] 1 LNS 1049.)
>
> [135] Generally, our courts have taken the position that in order to invoke s 66, parties are required to have no knowledge of the illegality. To that end, parties are required to come to court with clean hands in order to succeed in a claim under s 66. In an article entitled 'Relief For Claims Based on Contracts Tainted by Illegality' on Lex; In Breve, University of Malaya Law Review, Choong Shaw Mei, lecturer at the Faculty of Law, University of Malaya, examines the premise for the application of s 66 in considerable depth.
>
> [136] As pointed out by the learned author, the requirement for the absence of knowledge of the illegality was not the position taken in the days when s 66 was known as s 65 of the Contract Enactment 1899 ('the Contract Enactment'). In support of this, reference is made to the case of *Khem Singh v Anokh Singh* [1933] 2 MLJ 228; [1930] 1 LNS 2. In that case, Elphinstone CJ disagreed with the then-prevailing view of the Indian Courts at the time, stating:
>
> > The Indian Courts have taken the view that the words discovered to be void limit the operation of the section to cases where a contract is found to be void by reason of some facts not known to the parties at the date of the contract, but subsequently discovered?
> >
> > With the greatest respect to the Indian Courts I feel unable to adopt that view. *The words 'when an agreement is discovered to be void' are in general terms. The section is silent as to when or by whom or for what reason the agreement is to be discovered to be void. In my opinion the words 'discovered to be void' would mean no more than 'if found to be void'*. In the course of this suit the Court has found the agreement sued upon to be void. In this sense the agreement has been discovered to be void, and section 65 seems to be exactly applicable. (Emphasis added.)
>
> ...
>
> [139] However, this decision was not followed subsequently by the Federal Court, and in *Menaka* (the appeal to the Privy Council from the Federal Court case of *Ng Siew San v Menaka* [1973] 2 MLJ 154; [1973] CLJU 99; [1973] 1 LNS 99), the Privy Council agreed, without much reasoning, with the Federal Court's

interpretation of 'discovered to be void' as meaning that both parties were unaware of the illegality. As pointed out by the learned author, the Privy Council then appears to have melded or combined the principle of restitution with the principle underlying s 66 by stating:

> The principle underlying both sections [Section 65 of the Indian Contracts Act and our Section 66] is the same, and it is that 'a right to restitution may arise out of the failure of a contract though the right be not itself a matter of contractual obligation.

[140] The result is that most case law in this jurisdiction takes the position that parties should not be in pari delicto and the illegality of the agreement must be discovered subsequent to the date of the contract. *The somewhat varied positions taken in relation to s 66 makes the legal position less than absolutely clear*.

...

[142] However, in *Yeep Mooi v Chu Chin Chua & Ors* [1981] 1 MLJ 14; [1960] CLJU 169; [1960] 1 LNS 169, the Federal Court speaking through Salleh Abas FCJ held to the contrary and reverting to its original interpretation of s 66 held that:

> In our view this case fits in squarely with the words of s 66 as an agreement which is 'discovered to be void' does not mean that the contract is void on discovery or void because of discovery of illegality. *It means what it says, in that the contract was void ab initio without the parties at the time being aware of the true legal position*. It is only later that the contract is found to be void and so they became aware of its voidness. We are of the view therefore that s 66 of the Contracts Act applies to this and the appellant is entitled to the restitution of her money by the pawnshop which received an advantage from its use (*Menaka v Lum Kum Chum* [1977] 1 MLJ 91; [1976] CLJU 181). (Emphasis added.)

[143] In the varied positions adopted by our courts over the years it would appear that the original position adopted by Elphinstone CJ in *Khem Singh v Anokh Singh* (above) has considerable appeal. Section 66 was given a broad construction allowing for the remedy of restoration or restitution to the status quo ante in a suitable case. *What is key to Elphinstone CJ's interpretation of s 66 (then s 65) is that knowledge of the parties does not necessarily bar a s 66 remedy. Secondly, it was construed as being applicable in cases where the contract is void ab initio. This also accords with s 66 appearing in Part V of the Contracts Act 1950, which relates to the 'Performance of Contracts' and statutorily prescribes it as a remedy where a contract is discovered to be void, without any reference to knowledge of the parties*. This is a codified statutory remedy available where the contract is void and ought not to be stultified unnecessarily, particularly when there is no express preclusion of the remedy to cases where there was knowledge of the illegality as of the date of the contract. *Put simply, knowledge of the illegality is not a complete bar to the s 66 remedy*.

[144] This is also in accord with the early historical position in the common law as referred to by Lord Sumption in *Patel*, where the restoration of benefit was viewed as ensuring that the persons who procured an advantage or benefit by virtue of an illegality or an illegal transaction were not allowed to retain possession of the same as that would be contrary to principles of equity and fair play.

[145] This may appear to be at odds with what the courts have pronounced in the cases of *Singma Sawmill and Triple Zest Trading & Suppliers & Ors v Applied Business Technologies Sdn Bhd* [2023] 6 MLJ 818; [2023] 10 CLJ 187 ('Triple Zest'). *However, these are cases where the illegality was one that struck at the core primary obligations of the transactions under their respective statutes*. In *Singma Sawmill*, for instance, the landlord violated an express and clear condition on the title; indeed, the breach was so intentional that Raja Azlan Shah CJ termed it 'wilful, if not contumacious'. His Lordship also clearly regarded the appellants in that case as using the subject matter of the agreement for an 'unlawful purpose'.

[146] It is noteworthy that in interpreting the decision in *Singma Sawmill*, the Federal Court in *CME Group Bhd v Bellajade Sdn Bhd and another appeal* [2019] 1 MLJ 141; [2018] 10 CLJ 147, took note of the uniqueness of the facts of that case

...

[147] To this extent, *Singma Sawmill* ought to be construed in the context of its particular facts. (Emphasis added.)

[46] The Federal Court provided the following guidance regarding the granting of restitution under s 66 of the CA 1950 ('*Detik Ria* guidelines'):

How is s 66 to be applied?

[148] Therefore, the grant of the s 66 remedy warrants the formulation of a guide to determining whether the s 66 remedy is engaged or not. Where a contract is 'discovered to be void' or 'becomes void', the guidelines for the application of s 66 are as follows.

[149] First, the centrality of the illegality in the statute is to be considered. This is a matter of construction of the particular statute.

[150] Second, the proportionality of denying s 66 relief to the illegality should be considered. There are numerous factors which should be considered in assessing proportionality:

(a) whether the contract was performed or executed;

(b) whether allowing the claim would defeat the purpose of the prohibiting statute;

(c) nature and extent of the illegality;

(d) extent of the culpability of the parties;

(e) the intent of the parties in embarking on the transaction or omission as the case may be;

(f) nexus between the illegality and the contract; and

(g) whether the denial of relief is proportionate to the illegality.

[151] In this context, the extent of the parties' culpability for the illegality should be considered. Culpability refers to the degree of blameworthiness or responsibility of a person for their actions or omissions that lead to the illegality. Culpability is

different and distinct from knowledge. Knowledge refers to the awareness or understanding of facts or circumstances related to that act or omission. In other words, culpability is a broader concept than knowledge in that it encompasses more than just the intent and mental state of the individual at the time of the act or omission. In short, knowledge is a component of culpability.

[152] We reiterate that the presence of knowledge alone is not a complete bar to the s 66 remedy but is an important factor to be considered in determining culpability. Culpability, more particularly the extent of culpability, is one of the decisive factors in determining whether a remedy under s 66 should be granted.

[153] Finally, the court should consider holistically if the denial of relief is proportionate to the illegality.

[154] Put simply, the following factors, in this order, may be considered in determining if s 66 relief should be granted:

(a) the centrality of the illegality in the context of the particular statute breached;

(b) proportionality;

(i) culpability;

(ii) was the contract performed?

(iii) is the denial of s 66 relief a proportionate response to the illegality?

[155] The foregoing factors set out in the guidelines are not exhaustive. It is important that these factors are not utilised in a mechanistic and rigid fashion but considered holistically and given weight in accordance with the facts of the particular case (see *Ting Siew May v Boon Lay Choo & Anor* [2014] SGCA 28, *Ochroid Trading Ltd & Anor v Chua Siok Lui* [2018] SGCA 5 and *Patel*).

[47] We applied the *Detik Ria* guidelines in determining whether restitution under s 66 of the CA 1950 ('s 66 remedy') ought to be granted to the appellant in this case.

[48] As can be discerned from the passages of the Federal Court's judgment quoted in para [46] above, the *Detik Ria* guidelines established a two-stage assessment: first, evaluating the centrality of the illegality within the context of the statute breached; and secondly, assessing the proportionality of denying a s 66 remedy in light of the illegality.

Centrality of illegality in the context of the statute breached

[49] In this instance, the statute breached is the MLA 1951. In deciding the centrality of illegality in the context the MLA 1951, consideration must be given to the nature of the illegality.

[50] Pursuant to the MLA 1951, only moneylenders validly licensed under

the Act are permitted to enter into moneylending agreements. Illegality is central to the MLA 1951: specifically, the prohibition against unlicensed moneylenders entering into moneylending agreements. The Federal Court in *Detik Ria* held:

> [177] ... The prohibition in the statute is important because it forbids the levying of extortionate rates of interest levied on borrowers who are constrained to resort to borrowing from such unlicensed lenders. It carries with it great socio-economic ramifications. The object and purpose of the Moneylenders Act 1951 is to deter and disable illegal moneylending agreements. The parties to the illegal contract in *Triple Zest* knew, or ought to have known, that such moneylending is prohibited.

[51] The Court of Appeal in *Mahmood bin Ooyub*, and the Federal Court in *Triple Zest*, held that illegality struck at the core primary obligations under the MLA 1951. In both these cases, moneylending transactions by unlicensed moneylenders that were disguised as sale and purchase of properties to secure the grant of loans with interest, in order to circumvent the MLA 1951, rendered the agreements illegal under both the MLA 1951 and s 24 of the CA 1950.

[52] In this present case, the moneylending agreements are not illegal either under the MLA 1951 or s 24 of the CA 1950. They were entered by a licensed moneylender, did not impose extortionate interest rates on the borrower, and neither their consideration nor object was immoral or against public policy.

Proportionality

[53] According to the *Detik Ria* guidelines, in evaluating the proportionality of denying a s 66 remedy, one of the factors courts should consider is whether the agreement has been performed. In this case, the appellant's act of lending the monies and disbursing the loans under the moneylending agreements and the LOIs had been carried out. On the respondent's instructions, the appellant had disbursed the unpaid principal to Instant Bonus.

[54] Another consideration is whether granting a s 66 remedy would undermine the intent of the MLA 1951. In this case, it does not. As stated by the Federal Court in *Detik Ria*, the purpose of the MLA 1951 is to deter and disable illegal moneylending agreements. In this instance, both moneylending agreements are not illegal.

[55] Courts must also consider the nature and extent of the illegality, the nexus between illegality and the contract, and the culpability of the parties. Here, the moneylending agreements are not illegal. Accordingly, there is no nexus between illegality and the agreements, and the question of the parties' culpability does not arise.

[56] An important factor that must be considered in this enquiry into proportionality, is whether denying a s 66 remedy constitutes a proportionate response to the moneylending agreements, which are void but not illegal. In *Detik Ria*, the Federal Court observed that courts have, in some instances, granted s 66 remedies for illegal agreements based on the principle of proportionality.

[57] Additionally, as observed by Lee Swee Seng JCA (as he then was) in *Mahmood bin Ooyub*, there are cases where a party tries to resile from genuine moneylending transactions by alleging illegality. He said:

> [2] Granted there would be those cases where the transactions are genuine as reflected in the documents and then one party tries to resile from it and alleges it is illegal moneylending. Then on the opposite side would be cases where the moneylending transaction is dressed like an innocuous sale and purchase transaction where it is argued that the court should not go beyond its four walls for otherwise no transaction would be certain.

[58] In this present case, the moneylending agreements in question were transparently structured as agreements to lend money by a licensed moneylender, without any attempt to disguise their true nature. They were not hiding behind a false front.

[59] Differing from *Mahmood bin Ooyub* and *Triple Zest*, the moneylending agreements involved a licensed moneylender, and the interest rates charged were within the statutory limits set by the MLA 1951, despite being erroneously for unsecured loans. Although the agreements were in a wrong prescribed form, they were, nonetheless, in a form prescribed by Regulation 2003 and clearly identified themselves as moneylending agreements. The terms accurately represented their intended purpose, with no attempt to conceal the nature or object of the transactions, in contrast to the agreements in *Mahmood bin Ooyub* and *Triple Zest*.

[60] Accordingly, we conclude that, in view of these considerations, the application of proportionality to the matrix of facts supports granting the appellant a s 66 remedy. In this context, refusing a s 66 remedy would not constitute a proportionate response, particularly given that the moneylending agreements, though void, are not illegal.

CONCLUSION

[61] In light of the aforementioned reasons, we find that the learned High Court judge erred in holding that the moneylending agreements were illegal and in dismissing the appellant's claim for restitution of the unpaid principal.

[62] Accordingly, we allow this appeal and set aside the decision of the High Court dated 12 April 2023.

[63] We order the respondent to pay the appellant the sum of RM3,383,500.

[64] Interest at the rate of 5% on the judgment sum from the date of this judgment until full settlement.

[65] Costs in the sum of RM50,000 here and below, subject to allocatur.

Appeal allowed.

Reported by Nabilah Syahida Abdullah Salleh